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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,083	02/11/2004	Dilip Tapadiya	TAPADL003A	2371
20995 7590 10/16/2009 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER KIDWELL, MICHELE M				
ART UNIT		PAPER NUMBER		
3761				
NOTIFICATION DATE		DELIVERY MODE		
10/16/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/776,083

Applicant(s)

TAPADIYA, DILIP

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22, 103-116 and 124 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 3, 6-12, 15, 107 and 111 is/are allowed.
- 6) ☒ Claim(s) 2, 4, 5, 13, 14, 16-22, 103-106, 108-110, 112-116 and 124 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 124 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 124 recites the limitation "the first state" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2, 4, 13 – 14, 16 – 22, 103 – 106, 108 – 110 and 112 – 116 are rejected under 35 U.S.C. 102(b) as being anticipated by Holloway et al. (5,381,562).

As to claim 2, Holloway discloses a medical kit comprising at least one basin configured to be stackable in a leak proof state with a sidewall portion and a bottom wall portion and a conversion device on at least one of the sidewall portion and the bottom wall portion, the conversion device configured to confine all fluid within the

sidewall and bottom wall portions of the basin in the leak proof state and form a drain (42) in a second state, through which fluid inside the basin can be drained through at least one of the sidewall and bottom wall portions as set forth in col. 7, lines 3 - 15.

As to claim 4, Holloway discloses the conversion device located near the bottom of the at least one surface of the basin as set forth in figure 1.

As to claims 13 and 112, see the rejection of claim 2. Additionally, Holloway discloses a conversion device providing a tube as claimed as set forth in figure 1.

With respect to claims 14 and 113, Holloway discloses a medical basin wherein the cannula is integral with the sidewall as set forth in the figures.

Regarding claim 16, Holloway discloses a tube with a first end sized to engage a suction hose as set forth in figure 1.

With respect to claim 17, Holloway discloses a conversion device comprising a clip configured to engage a portion of the basin and to engage a suction hose so as to fix an end of a suction hose near the bottom wall portion of the basin as set forth in figure 7.

With reference to claim 18, Holloway discloses a conversion device including an aperture formed in the peripheral wall and a plug configured to engage the aperture as set forth in col. 7, lines 30 – 36 and in figure 9.

As to claims 19, 108 – 110 and 114 – 116, the conversion device may be interpreted as claimed and may comprise a threaded aperture and plug as set forth in col. 7, lines 30 – 36 and in figure 9.

Regarding claim 20, see col. 7, lines 30 – 34.

As to claim 21, see col. 7, lines 21 – 29 and figures 5 – 6.

With reference to claim 22, Holloway discloses a medical kit wherein at least one of the first and second ends of the tube is sized to engage a suction hose as set forth in figure 1.

As to claim 103, Holloway discloses a medical basin for collecting fluid during irrigation of a wound on a human anatomy comprising: at least one sidewall wherein the at least one convertible portion is configured to confine fluid within the basin by inhibiting fluid from passing through the at least one sidewall and bottom and define an aperture through the at least one sidewall and bottom when the at least one convertible portion is modified as set forth in col. 7, lines 3 - 15.

With reference to claim 104, Holloway discloses a frangible portion as set forth in col. 7, lines 3 - 15.

As to claims 105 and 106, Holloway discloses a medical basin wherein the at least one frangible portion is an annularly score as set forth in figure 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3761

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 5 and 124 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holloway et al. (5,381,562 and further in view of Robinson (US 3,407,957).

With respect to claim 5, Holloway provides a medical kit providing at least one basin with the claimed portions as set forth in figure 1.

The difference between Holloway and claim 5 is the provision that the basin includes a convertible portion comprising a frangible portion.

Robinson teaches a frangible closure device for various containers as set forth in col. 1, lines 1 – 17.

It would have been obvious to one of ordinary skill in the art to modify the closure of Holloway with a frangible closure as taught by Robinson because the use of a frangible closure provides a tightly sealed closure as well as one that allows for easy accessibility and is inexpensive to manufacture as taught by Robinson in col. 2, lines 3 - 27.

With respect to claim 124, see the rejection of claim 5.

Allowable Subject Matter

Claims 1, 3, 6 – 12, 15, 107 and 111 are allowed.

Response to Arguments

Applicant's arguments filed June 12, 2009 have been fully considered but they are not persuasive.

With respect to the applicant's argument that the basin of Holloway lacks dual functionality, the examiner disagrees. Holloway discloses in col. 7, lines 1 – 49 that the fluid may be confined within the basin until manipulation of the clamp means (i.e., the clamp/seal is readily or easily broken) allows for drainage of the desirable amount of fluid. The applicant argues that fluid is confined within the hose, but the examiner disagrees. While some fluid may be within the hose, the claim (48) is adjustable and may be fitted directly next to the basin in order to prevent fluid from flowing into the hose, thereby confining fluid in the basin. The applicant has added language that the device is configured to confine all fluid within specific areas of the basin. The examiner contends that Holloway is fully capable of performing the recited function especially in light of the fact that the claimed limitations are directly relative to how much fluid is in the basin. For example, if a small amount of fluid is put in the basin, then regardless of conversion device, the fluid would be confined to the claimed areas.

Regarding the conversion device, the examiner maintains the current rejection in that the clamp may be considered as the element that allows the fluid to be confined within the basin or allowing it to be drained out.

With respect to the applicant's arguments that the basin of Holloway is not stackable in a leak proof state, the examiner disagrees. The basin of Holloway is fully capable of being stacked in any state.

The examiner contends that the tube of Holloway may be considered to have a first end disposed at an upper edge of the sidewall portion and a second end disposed at the bottom of the sidewall portion as shown in figure 5. The upper edge and the bottom are relative terms that may be construed differently depending on what the portion is being related to. For example, the upper edge may be upper as compared to the bottommost portion and the bottom may be considered such as related to an upper portion. Likewise, as shown in figure 1, one end of the tube is at an upper edge (i.e. top of the basin as shown in the figure) and the second end of the tube is disposed at the bottom of the sidewall as shown in figure 1. The term "edge" may be considered as the uppermost and surrounding areas.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both references seek to provide a closure means on a thermoplastic material. The substitution of one type of closure for another is within the level of ordinary skill in the art. Furthermore,

Robinson provides a motivation in disclosing that the specific type of closure means set forth in the prior art provides a tightly sealed closure as well as one that allows for easy accessibility and is inexpensive to manufacture as taught by Robinson in col. 2, lines 3 - 27.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michele Kidwell/
Primary Examiner, Art Unit 3761